

Minutes of the Kansas Sentencing Commission Meeting January 20, 2006

The Honorable Ernest L. Johnson, Chairman, called the Kansas Sentencing Commission meeting to order on January 20, 2006, at 1:40 p.m. The meeting began as a joint meeting with the Criminal Justice 3-R Committee in the Florentine Room of the Jayhawk Tower Building, Topeka, Kansas.

Attendance

Members: Honorable Ernest L. Johnson, Chairman; Paul Morrison, District Attorney, Vice Chairman; Honorable Christel Marquardt; Honorable Larry Solomon; Senator John Vratil; Representative Janice Pauls; Roger Werholtz, Secretary of Corrections; Marilyn Scafe, Kansas Parole Board; Chris Mechler, Office of Judicial Administration; Eric Rucker, Deputy Attorney General; Kathleen Lynch, Private Defense Attorney; Jaime Richardson, Public Member. Staff: Kunlun Chang, Research Director; Fengfang Lu, Senior Research Analyst; Lora Moison, Research Analyst; Natalie Gibson, Staff Attorney; Brenda Harmon, Administrative Assistant; Janice Brasher, Grant Administrator; Marty Schmiedeler, Accountant; Jennifer Dalton, Research Analyst.

Presentation on Reentry Initiative and the JEHT Foundation

Secretary Werholtz gave a PowerPoint presentation and discussed ideas on how to safely reintegrate people exiting the Kansas prison system back into communities. Between 95-98% of offenders entering Kansas prisons will be returning to live within communities. Some of the items discussed included: FY2005 and 2006 prison population projections; prison housing expansion options; and the number of return admissions for condition violations by month. Data shows more people are now under parole supervision with the same set of resources and are returning to prison less frequently. This shows there may be some merit in the Reentry program. Handouts were provided.

Chairman Johnson recessed the meeting. The Sentencing Commission moved to the Senate Room and reconvened.

Approval of the Minutes

The Chairman referred to the minutes of the December 21, 2005, Kansas Sentencing Commission meeting. A motion was made to approve the minutes by Ms. Kathleen Lynch and seconded by Ms. Chris Mechler. The motion carried.

Welcome Judge Solomon and Natalie Gibson

Chairman Johnson welcomed the Honorable Larry Solomon as a new Commission member. Judge Solomon is from Kingman, Kansas. He also introduced Ms. Natalie Gibson as the new staff attorney for the Sentencing Commission. She joined the staff January 5th.

KSC Bills introduced through Senate Judiciary Committee per 12/21/05 KSC meeting

At the last meeting, Commission members decided to submit for drafting Bills supporting the concept of the statewide use of the LSI-R, and extension of the Johnson County Pilot Project. January 23rd was the deadline, and the draft Bills have been introduced (copies provided to Commission members). There have been no hearings yet, so if Commission members see any omissions or mistakes, they are to bring them to the attention of Chairman Johnson so they can be corrected in Committee.

Supporting the concept of the state wide, standardized assessment instrument

Ms. Mechler shared information from a recent OJA meeting. There was a question about sharing a database with DOC, and the OJA Information Technology department head feels this will work very well. He's planning on visiting with the IT department head at DOC to further discuss the possibilities and how this can be accomplished. There are at least 355 OJA staff state wide that will need training on the LSI-R. Training costs are estimated at \$515,000. The Juvenile Justice Authority is also very interested in adopting the Youth Level of Service for their youthful offenders, and would be interested in participating in training. This may give another source of cost reduction, since most of the staff statewide does all instruments. Since it is past when the court would submit its budget, Chairman Johnson asked whether we could attach a fiscal note and ask it to be approved and paid through the courts. Senator Vratil stated it would be helpful for the Commission staff to go ahead and generate this information so it will be ready to go when they receive the inquiry.

Senate Bill 351 – Drug Abuse Assessment

Chairman Johnson discussed SB 351, which is a bill that contains some of the items previously recommended by KSC (copy of Bill provided). One of the proposals is that the statute be modified to allow the drug treatment assessment on the defendant be done after the sentencing. This is addressed on page 3, lines 22-26. Following a discussion by Commission members, the following motion was made:

Senator Vratil moved that the Sentencing Commission support Senate Bill 351 as introduced with the following exceptions:

1. On page 3, line 25, delete the word “specifically”
2. On page 3, line 26, delete the word “after” and insert the word “before” in its place
3. Reinsert the word “presentence” where it has been stricken on page 4, lines 26 and 42 and page 5, lines 1 and 24
4. Jaime Richardson asked that on page 4, line 7, the listing of “mental health professional” be expanded to include “licensed marriage and family therapists”
5. The language on page 3, lines 22-23 that has been stricken needs to be reinserted: “As part of the presentence investigation pursuant to K.S.A. 21-4714, and amendments thereto,”

Judge Marquardt seconded the motion. The motion carried.

Senate Bill 123 Retroactivity – review of 2005 House Bill 2231

Senator Vratil and Vice Chair Morrison provided an update on HB 2231, which concerns retroactivity for SB 123. The Commission is not in favor of elements of this bill, specifically, the retroactive provisions.

Issues of concern include:

1. Some people that would benefit from this bill are threats to communities
2. The increased burden on the court due to hearings that will be requested by the affected offenders
3. The increased burden on prosecutors to prove that an offender should not win retroactive application of SB 123
4. The increased burden on the treatment providers due to the increased number of offenders eligible for SB 123 treatment
5. The increased funding that would be required
6. The increased resource requirements needed to make the process work
7. Possibility of legal issues involved with the process of reweighing an old case that was done under old laws
8. Legal issues involved when Sentencing Judges or Parole Board are asked to make a finding that offender should be released or not released based on what he or she thinks they did and not what they were convicted of. There are some real serious legal issues associated with this. What standard would be used for review? Is this a discretion standard, or should the whole thing be reweighed? Where is the burden of proof?
9. Possible constitutional issues

Vice Chair Paul Morrison made a motion that the Sentencing Commission oppose House Bill 2231 for all the reasons stated above, and due to some potential constitutional and legal issues associated with the implementation, as well as the practical burden on sentencing judges, prosecutors and correctional resources that would be involved. Ms. Chris Mechler seconded the motion. The motion carried.

Senator Vratil requested that Vice Chair Morrison, Chairman Johnson, the Honorable Christel Marquardt and Ms. Patricia Biggs be prepared to testify to the Commission's stance of not supporting retroactivity of SB 123. He expects strong opposition to our position.

Data Request

A data request received from an economist at the University of Pennsylvania will be moved to the next Commission meeting for a decision.

CJ-3R (SB45) Committee Update

Judge Marquardt and Secretary Werholtz are encouraged following a conversation Judge Marquardt had with the Governor, and information heard today from the JEHT foundation, concerning financial support. They need about \$100,000 to finish the project.

Next Meeting

The next Commission meeting is scheduled for Friday, February 24, 2006, at 1:30 p.m. Chairman Johnson will email a copy of the 2006 meeting schedule, and it will be discussed at the next meeting.

The meeting was adjourned.